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Mary Dove
Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

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Dear Ms. Dove:

Thank you for the opportunity to submit these comments on the Office of General Counsel's draft of Advisory Opinion 2004-7. We believe that the draft is well organized, carefully analyzed, and in large part provides clear guidance to the requestor.

There is a single area in which we disagree with the draft. Our concern pertains to the section identified as 6 in the draft, "Announcing and publicizing the results of the Prelection on air, via the web, or through other methods, whether or not they are framed as an endorsement by MTV News."

The analysis first considers whether this activity may fall within the press exemption, and concludes that it may, "but only to the extent that MTV regularly disseminates news stories and related commentary in this manner to those who sign up to receive these communications." Elsewhere in the draft, however, the analysis used to determine applicability of the press exemption is whether it is an activity "typically performed by a press entity." See, e.g., page 7 lines 13-19. Furthermore, in *Reader's Digest*, 509 F. Supp. 1210 (S.D.N.Y. 1981), there does not appear to have been any evidence that the corporation in question had previously disseminated video tapes to television stations, yet the Court left open the possibility that by doing so it was acting in its capacity as a publisher.

The case of MTV is far clearer, as any dissemination of Prelection results by e-mail or text messaging would clearly be related to its legitimate press function of conducting the Prelection and reporting on the results. Allowing participants to receive those results through the channel of communication they choose, be it e-mail, a visit to a web site, tuning on the television, or a text message to their mobile phone, is an appropriate way to attract participants into the project and in an era of a rapidly evolving communications environment is perhaps a critical step for media companies to interact with their audiences. We therefore suggest that the correct standard should be whether the news industry in general regularly uses this mechanism to disseminate news stories and commentary, not whether this particular requestor has a prior history of doing so. We

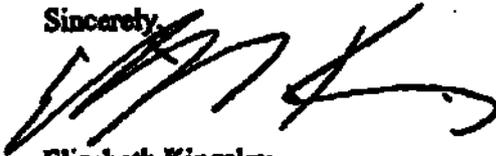
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further note that the use of e-mail to disseminate news is commonplace. By way of example, washingtonpost.com distributes regular e-mail newsletters on a variety of issue areas. CNN.com allows users to sign up for breaking news e-mail alerts. Major mobile phone service providers offer subscribers the opportunity to receive alerts provided by partner news organizations. For instance, it is our understanding that Sprint users can receive news, sports, and weather updates, with news provided by CNN or MSNBC, and Verizon customers can select alerts from CNN, CNN Money (stock market information), the New York Times, and MSNBC. Use of these technologies to provide news updates is not a novel practice in the industry.

To the extent the Commission concludes that these communications may not be covered by the press exemption and must be analyzed as corporate communications to the general public, some clarification of the conclusion would be helpful. The draft AO, page 10 lines 15-21, discusses the rules governing such communications that contain express advocacy. The questions posed request a response on two variants, one where the announcement also includes a reference to an editorial endorsement (express advocacy), and one where it merely reports the results of the voting in the Prelection. It is not clear from the draft whether there is an implicit assumption that reporting the results would constitute express advocacy. If that is the case, we do not believe it is a correct conclusion. There is a significant difference between reporting the results of a vote conducted among a group of people not controlled by the speaker and stating the speaker's own opinion. We therefore urge the Commission to clarify that the discussion on page 10, lines 15-21 applies only to communications which include an endorsement from MTV or other commonly accepted form of express advocacy, but that reporting the Prelection results (an overall winner, or percentage of vote for each candidate) would not in and of itself constitute express advocacy.

Sincerely,



Elizabeth Kingsley

cc: Office of General Counsel